

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

CC Docket No. 94-129

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REPLY COMMENTS OF
CUSTOM TELECOMMUNICATIONS NETWORK

Custom Telecommunications Network of Arizona, Inc. ("CTN")^{1/}, by its undersigned counsel, hereby submits its reply comments in response to the initial comments filed in the above-captioned proceeding on January 9, 1995. The majority of commenting parties agree that adoption of overly restrictive rules by the Commission could unnecessarily impede informative IXC marketing practices and thereby restrict competition in the long distance market. CTN respectfully encourages the Commission to recognize that several of the proposed revisions to the Primary Interexchange Carrier ("PIC") change rules could have a detrimental impact on the manner in which IXCs are able to market their services.

CTN along with the majority of commenting IXCs, objects to overly broad marketing rules that limit marketing flexibility. In prior proceedings, the Commission has recognized that its rules should permit a wide range of IXCs marketing efforts while maintaining the

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^{1/} CTN is an interexchange carrier engaged in the resale of intrastate telecommunications services in the Southwestern United States.

protection embodied in PIC change rules.^{2/} CTN encourages the Commission to require clear communications with customers, but not to the extent of prescribing the exact form and content of Letters of Agency ("LOAs"). CTN also objects to restrictions on the use of 800 numbers for customer requested PIC changes. Finally, CTN joins other commenting parties in encouraging the Commission to preempt conflicting state regulations regarding unauthorized PIC changes.

CTN supports Section 64.1150(d) of the proposed rules, which outlines the type of information that should be contained in a LOA, and Section 64.1150(e), which bars negative inducements. Enforcement of these rules will protect consumers without impeding the competitive flexibility of the IXC industry.

I. THE COMMISSION SHOULD AVOID ADOPTING RULES THAT ARE OVERLY BROAD AND HARMFUL TO COMPETITION

The Commission's current LOA regulations allow IXC marketing flexibility while protecting consumers against unauthorized PIC changes.^{3/} Commenting parties have offered strong support for the continuation of this approach. *See e.g., Competitive Telecommunications Association ("Comptel") Comments at 2; Allnet Communications Services, Inc. ("Allnet") Comments at 3.* CTN agrees that the adoption of Sections

^{2/} See, e.g., *Illinois Citizens Utility Board Petition for Rulemaking, Memorandum Opinion and Order*, 2 FCC Rcd 1726 (Com.Car.Bur. 1987), where the Commission states that its intent was to "clearly facilitate the ICs' marketing efforts while maintaining the protection embodied in the letter of agency requirement" when discussing a prior proceeding, *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase 1, 101 FCC 2d 911 (1985).

^{3/} *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, Report and Order, 7 FCC Rcd 1039, 1049 (1992).

64.1150(d) [necessary information to be prescribed in LOAs] and 64.1150(e) [negative inducement prohibition] will protect the public without unnecessarily impeding competition within the IXC industry. CTN's endorsement of these proposed sections is supported by a majority of commenting parties. *See e.g., AT&T Corp. ("AT&T") Comments at 12; Sprint Communications Co. ("Sprint") Comments at 1; Operator Service Company ("OSC") Comments at 4; New York Department of Public Service ("NYDPS") Comments at 2.*

However, other sections of the proposed rules have the effect of restricting a wide-variety of legitimate IXC behavior. The proposed rules are not necessary to eliminate deceptive practices. Indeed, the broad reach of the Commission's proposed rules will unnecessarily penalize carriers that do not engage in deceptive marketing practices. *Frontier Communications International ("Frontier") Comments at 2.*

For instance, Section 64.1150(b) [requiring the LOA to be in a separate document] and Section 64.1150(c) [requiring that the LOA not be combined with an inducement of any type] are overly burdensome. These rules will handicap small and medium sized IXCs by raising administrative costs and restricting their ability to use marketing inducements to attract customers from larger IXCs. *One Call Communications, Inc. ("One Call") Comments at 3.* Section 64.1150(c) limits the ability of an IXC to provide needed information on the same form as a LOA. Such a requirement could increase customer confusion and raise IXC marketing costs. These increased costs will be especially burdensome to small and medium sized IXCs and in all likelihood will be passed on to customers. *See, e.g., One Call Comments at 3.* In an industry where the three largest carriers control over 85 percent of the

market, any rules limiting marketing behavior should be scrutinized for undue burdens they may place on small and medium sized IXC's. *Telecommunications Resellers Association ("TRA") Comments at 12; Touch 1, Inc. and Touch 1 Communications (collectively "Touch 1") Comments at 7.*

The limitation of the ability of an IXC to include an inducement with a LOA is overly restrictive. Such a rule would eliminate many effective and legitimate marketing practices that are fundamental to the development of healthy industry competition. *See e.g., MCI Telecommunications Corporation ("MCI") Comments at 7-8; AT&T Comments at 12-13; OSC Comments at 4-5; MidCom Communications, Inc. ("MidCom") Comments at 9; Touch 1 at 7-8.* The proposed rule is overreaching and would serve to inhibit marketing techniques that are necessary for success in a marketplace dominated by a small number of large carriers. Nondominant IXC's must have the ability to offer their customers a new variety of creative service packages in order to remain competitively viable. *One Call Comments at 7; Touch 1 Comments at 8; TRA Comments at 12.* Such carriers may not have the resources to wage nationwide media advertising campaigns used by their larger competitors. Indeed, for some smaller companies inducements are key marketing tools. *See, e.g., Hertz Technologies, Inc. ("Hertz") Comments at 1-2.*

There is widespread agreement that these rules will have a negative and uneven competitive impact on the IXC industry. *MCI Comments at 4; TRA Comments at 12; Touch 1 Comments at 7; One Call Comments at 3.* The Commission has already mandated that each LOA must contain specific information in a clear, unambiguous form in Section

64.1150(d). *See CTS Comment at 4.* If this section is vigorously enforced, the Commission need not adopt the overly broad Sections 64.1150(b) and (c) of the proposed rules. *CTS Comments at 4.* CTN agrees with the parties who suggest that the Commission should not adopt Sections 64.1150(b) and (c). *See, e.g. TRA Comments at 12; Touch 1 Comments at 7-8; One Call Comments at 3; CTS Comments at 5; ACTA Comments at 2.*

II. THE COMMISSION SHOULD NOT IMPOSE ADDITIONAL FORMALISTIC REQUIREMENTS ON LOAs

The Commission need not impose additional requirements on IXC's regarding LOAs and PIC changes beyond the requirement that the information contained within the LOA be clear and non-misleading.

Several commenting parties have correctly stated that unauthorized changes occur for many reasons, not all of which are fraudulent (such as misunderstandings among family members). *OCS Comments at 7; Sprint Comments at 15.* Although CTN agrees that consumers should receive some reimbursement for PIC change charges and related costs, CTN joins several other commenting parties in suggesting that when an unauthorized PIC change occurs and the customer uses the service of the new carrier, the customer should only be responsible for payment of charges to the carrier whose service is equal to the amount which would have been charged by the previously authorized carrier. *See e.g., Midcom Comments at 11-13; Hertz Comments at 4; OSC Comments at 7.* The customer should be required to pay for the cost of the services received at the rate of the chosen PIC. As LDDS Communications, Inc. ("LDDS") recognizes, the customer would become the beneficiary of a windfall if not required to cover these costs, and such an approach could lead to an increase

in customer fraud. *LDDS Comments at 7*. A customer should not be relieved from responsibility for calls and charges he or she knowingly incurred, simply because a PIC change error may have taken place. *One Call Comments at 12*.

The Commission also requested comments on whether it should adopt rules regulating the use of "800" numbers in solicitation of PIC change orders. CTN supports a majority of commenting parties in urging the Commission not to apply its telemarketing rules to 800 number calls. See e.g., *AT&T Comments at 22*; *One Call Comments at 12*; *GTE Service Corporation ("GTE") Comments at 5*; *Sprint Comments at 14*; *Touch 1 Comments at 8*; *MidCom Comments at 11*. Outbound telemarketing calls differ greatly from inbound 800 number calls. An 800 call is initiated by a consumer, who is fully in control of the timing and the purpose of the call. If a customer makes a decision to switch carriers while on the call, then that customer should be permitted to do so. *AT&T Comments at 22*; *Touch 1 Comments at 8*. Any other approach would be inefficient and contrary to the manner in which customers typically order goods and services by phone. *AT&T Comments at 15*. Indeed, IXC's rely heavily on calls to 800 numbers as a means of acquiring new business. This practice is no different from the use of 800 numbers by airlines, hotels, and mail order catalogues. To prohibit IXC's from accepting PIC change orders from customers who call these 800 numbers would make it more cumbersome for consumers to change IXC's. *Lexicom, Inc. ("Lexicom") Comments at 4*. Such a prohibition would have competition and efficiency impacts that would far outweigh any conceivable benefit that arose from them.

III. PREEMPTION OF CONFLICTING STATE LAW

CTN, along with many commenting parties, urges the Commission to preempt inconsistent state PIC change requirements. *See e.g., Sprint Comments at 4; LDDS Comments at 2-3; Americas Carriers Telecommunications Association ("ACTA") Comments at 11-13; OSC Comments at 10-13; CompTel Comments at 11-12; CTS Comments at p.6.* CTN is concerned that inconsistent state regulations could result in customer confusion and expensive compliance difficulties. Inconsistent state regulations will undermine a uniform federal approach. *CompTel Comments at 11.* CTN therefore urges the Commission, as part of this proceeding, to preempt any state regulation that imposes conflicting requirements from federal PIC regulations governing PIC selection procedures, including regulations applicable to LOAs.

IXCs will face a patchwork of conflicting regulatory requirements if states are allowed to promulgate their own regulatory frameworks. *LDDS Comments at 8.* Rather than embarking on a cost-effective nationwide marketing campaign, IXCs will be forced to target their marketing on a state-by-state basis - resulting in increased costs that will likely be passed on to consumers. *LDDS Comments at 3.* Such costs would have the greatest impact on smaller IXCs, and the necessity of charging higher prices will restrain their ability to compete effectively.^{4/}

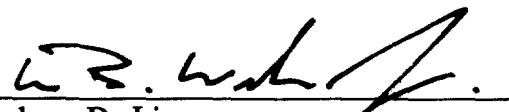
^{4/} Telecommunications Company of America ("TELECAM") and One Call Communications correctly recognize that even minimal increases in marketing costs can jeopardize a small IXCs ability to stay in business. TELECAM indicates that a 4% increase in its customer rates [due to increased marketing costs] would likely have such an effect. *TELECAM Comments at 2; One Call Comments at 3.*

A single unified set of requirements will permit national marketing campaigns. The Commission therefore should preempt inconsistent state regulations. Such an action would be consistent with applicable law, and is in the public interest because customer confusion would be reduced and carriers would not be subject to unnecessary administrative expenses and burdens.

IV. CONCLUSION

CTN strongly supports the Commission's efforts to encourage clear and unambiguous communication between long distance carriers and their customers. However, CTN objects to additional requirements which would confuse customers and increase costs.

Respectfully Submitted



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February 8, 1995

CERTIFICATE OF SERVICE

I, Brenna M. Newman, hereby certify that a copy of the foregoing Reply Comments has been sent by United States First Class Mail, postage prepaid, unless otherwise noted, to all parties listed in the foregoing Reply Comments on this 8th day of February, 1995.


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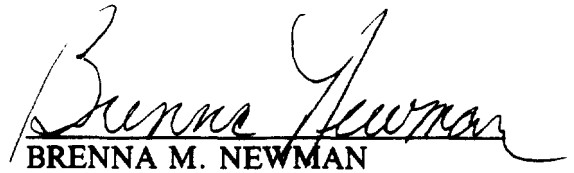
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